

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUCY ROBLEDO,

Defendant.

CASE NO. 14CR2315 WQH

ORDER

HAYES, Judge:

The matter before the Court is the Appeal to the District Court Judge regarding the denial of bond by the Magistrate Judge (ECF No. 23) filed by Defendant Lucy Robledo.

FACTS

On March 26, 2014, Defendant Robledo was arrested with Stephanie Rojas at the Port of Entry. At the time of the arrest, Stephanie Rojas made a statement to Homeland Security Investigations Special Agent B. Trammel. Robledo and Rojas were charged by Information in Criminal Case No. 14 CR 1108 WQH with importation of methamphetamine in violation of 21 U.S.C. §§ 952 and 960. On April 3, 2014, the Magistrate Judge set bond conditions for Defendant Robledo at a \$40,000.00 personal appearance bond with signature of two owners of property via trust deed.

On August 12, 2014, Stephanie Rojas entered a plea of guilty to the charge of

1 importation of methamphetamine without a plea agreement in Criminal Case No. 14 CR
2 1108 WQH.

3 On August 14, 2014, the grand jury returned an Indictment in this case charging
4 Defendant Robledo in Count 1 with importation of methamphetamine in violation of
5 21 U.S.C. §§ 952 and 960 and in Count 2 with attempted retaliation against a witness
6 in violation of 18 U.S.C. § 1513(b)(2). Count 2 of the Indictment charged:

7 Beginning on or about March 26, 2014 and continuing to on or about
8 August 12, 2014, within the Southern District of California, and
9 elsewhere, defendant LUCY ROBLEDO, did knowingly attempt to
10 threaten to engage in conduct which would cause bodily injury to
11 Stephanie Rojas, to wit, directing individuals known and unknown to the
12 Grand Jury to physically harm and threaten to physically harm Stephanie
13 Rojas, with the intent to retaliate against Stephanie Rojas for giving
information relating to the commission or possible commission of a
Federal offense, to wit, importation of methamphetamine, a Schedule II
Controlled Substance, into the United States from a place outside thereof,
to Homeland Security Investigations Special Agent B. Trammell, a law
enforcement officer, in violation of Title 18, United States Code, Section
1513(b)(2).

14 (ECF No. 1 at 2).

15 On August 19, 2014, Defendant Robledo was arraigned on the charges in this
16 case and the Magistrate Judge set the same bond as previously set in 14 CR 1108 WQH.
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18 On August 19, 2014, the Government filed a motion to dismiss the Information
19 in Criminal Case No. 14 CR 1108 WQH against Defendant Robledo. Counsel for the
20 Government informed the Court that the Government did not have sufficient evidence
21 to proceed on the drug importation charge against Defendant Robledo.

22 On September 11, 2014, defense counsel in this case requested a further bond
23 hearing with the Magistrate Judge. Defense counsel asserted that the Government's
24 admission that it could not prove the drug charge against Defendant Robledo
25 constituted a change in circumstances and requested that the Court release Defendant
26 on her own signature. Defendant counsel asserted that Defendant was pregnant, that
27 Defendant had no surety, and that the remaining charge of attempted witness retaliation
28 carried a high end guideline range "18-month sentence." (ECF No. 27 at 5).

1 The Government opposed the request to modify the bond and recounted the
 2 following facts to the Magistrate Judge:

3 Ms. Robledo and her original co-Defendant, Ms. Rojas, were
 4 arrested at the port of entry with a load of narcotics. Ms. Rojas gave a
 5 statement immediately post-arrest admitting the elements of the offense
 6 and saying that she had recruited Ms. Robledo to join her in the endeavor,
 7 and that Ms. Robledo's role was to essentially be cover or camouflage.
 8 They thought it would be less suspicious to have two people in the vehicle
 9 than one.

10 While M. Robledo was in custody, she – she placed a series of
 11 recorded jail calls, in one of which in particular the gentleman on the other
 12 end of the call, who we believe, like Ms. Robledo, to be associated with
 13 the Eighteenth Street Gang in Los Angeles, said – and I'm not going to get
 14 it exactly right, but said, I'm going to tell you this fast because of the
 15 recording. I talked to Smiley. Do you want us to lock her up until you get
 16 out of custody or just check her? Just put the word out.

17 Experts in terminology frequently used by gangs will testify at trial
 18 that “lock her up” and “check her” are essentially – are essentially
 19 authorization to put out – not a fatal hit, but a violent assault on Ms. Rojas.

20 Ms. Robledo, when asked what she wants this gentleman to do,
 21 says, yeah, just check her, which, again, experts will say means do what
 22 you have to do to get her to shut up.

23 (ECF No. 27 at 8).

24 The Magistrate Judge denied Defendant Robledo's request for release on her own
 25 recognizance stating in part: “... given the allegations in this case and her criminal
 26 history, I don't find the proposed bond is sufficient. So I'm willing to modify it, but
 27 you've got to find somebody who believes in her who has a job. And there's some
 28 flexibility on how much they're making, but it needs to be somebody who's got some
 29 value, who's working, who's willing to sign a bond on her behalf. I will not let her out
 30 on OR.” *Id.* at 12.

31 On September 16, 2014, Defendant appeared before the Magistrate Judge for a
 32 change of plea hearing. Pursuant to a plea agreement, Defendant entered a plea of
 33 guilty to a Superseding Information charging obstructing justice by retaliating against
 34 a witness in violation of 18 U.S.C. §1513(b)(2). The felony charge carried a maximum
 35 sentence of 20 years in prison and a term of supervised release of up to 3 years. In the
 36 Plea Agreement Defendant admitted that the following facts are true and undisputed:

37 On or about March 26, 2014, defendant was a passenger in a vehicle
 38 driven from Mexico into the United States through the Otay Mesa,
 39 California, Port of Entry (POE) by Stephanie Rojas.

1 On March 26, 2014 Stephanie Rojas gave a post-arrest statement to
2 Homeland Security Investigations Special Agent B. Trammell, a law
3 enforcement officer, regarding the federal offense of importation of
methamphetamine.

4 Defendant believed that Stephanie Rojas implicated her in the commission
of that offense.

5 On or about May 20, 2014, Defendant instructed another person to
threaten Stephanie Rojas with bodily injury in retaliation for her statement
6 to Special Agent Trammell.

7 At the time she instructed the other person to threaten Stephanie Rojas,
Defendant believed that Stephanie Rojas was out of custody and therefore
8 could be threatened.

9 (ECF No. 22 at 3). Pursuant to the Plea Agreement, the parties agreed to "jointly
10 recommend time served." *Id.* at 8.

11 At the conclusion of the change of plea hearing, defense counsel requested that
12 the Magistrate Judge release Defendant on her own recognizance in light of the joint
13 agreement to recommend time served in the plea agreement and the Government's
14 agreement to recommend release on her own recognizance. The Magistrate Judge noted
15 that the burden had shifted to clear and convincing evidence and heard further
16 argument. The Magistrate Judge stated:

17 I said last time I would not release her on OR. I don't feel that it
18 creates—I'm concerned about the safety of the community. I'm concerned
19 about her willingness to appear in court as required. I understand she's
pled guilty. But that actually changes the burden, not in the way you and
Government think that it changes. It makes it more difficult for the Court
to set bond.

20 This Defendant has a criminal history.¹ Last time your co-counsel
21 proposed \$10,000 secured by her signature and I said I wouldn't sign that.
I will not sign an OR bond. ... And what I indicated is, if there's somebody
22 who's willing to sign a bond who believes she's going to show up and
comply with the conditions of her release, I would consider that. And if
they have ties to her, then I'd consider a lower amount of the bond. But
23 an OR bond, no, I don't believe – given this Defendant's history and what
she pled to, I do not believe that an OR bond is appropriate, and I won't
24 set that.

25 (ECF No. 28 at 21).

26 On August 20, 2014, Defendant filed this appeal from the Magistrate Judge's
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28 ¹ Defendant has a prior conviction for Conspiracy to Steal Mail and a prior petty theft charge.

1 denial of release on her own recognizance. Defendant asserts that the dismissal of the
2 drug charges and her impending childbirth warrant her release on her own
3 recognizance. Defendant asserts that the agreement of the Government to recommend
4 time-served and release on her own recognizance support her request. Defendant
5 asserts that she is a college graduate with an associate's degree, that she had full time
6 employment, and that she has a place to live. Defendant asserts that release on her own
7 recognizance is reasonable because she is about to give birth and that her guideline
8 range upon sentencing will be 10-16 months. Defendant asserts that she has shown by
9 clear and convincing evidence that she not a danger to the community or a flight risk.

10 The Government does not oppose Defendant's request for a modification of bond
11 conditions.

12 On September 23, 2014, this Court held a hearing on the Defendant's Appeal to
13 the District Court Judge regarding the denial of request for release of Defendant on her
14 own recognizance by the Magistrate Judge.

APPLICABLE LAW

16 18 U.S.C. Section 3143(a) provides:

17 Release or detention pending sentence.--(1) Except as provided in
18 paragraph (2), the judicial officer shall order that a person who has been
19 found guilty of an offense and who is awaiting imposition or execution of
20 sentence, other than a person for whom the applicable guideline
21 promulgated pursuant to 28 U.S.C. 994 does not recommend a term of
22 imprisonment, be detained, unless the judicial officer finds by clear and
convincing evidence that the person is not likely to flee or pose a danger
to the safety of any other person or the community if released under
section 3142(b) or (c). If the judicial officer makes such a finding, such
judicial officer shall order the release of the person in accordance with
section 3142(b) or (c).

23 || 18 U.S.C. §3143(a)(1).

RULING OF THE COURT

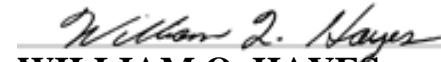
In this case, the Magistrate Judge originally set bond conditions at a \$40,000.00 personal appearance bond in the initial drug case and continued the bond to the second case charging the original drug charges and the attempted witness retaliation charge. The Magistrate Judge has conducted a number of hearings to consider the request by

1 Defendant for release on her own recognizance. This Court has fully reviewed the
2 transcripts of the hearings before the Magistrate Judge and conducted a hearing on this
3 appeal to fully consider all of the facts and circumstances regarding this Defendant and
4 the offense in this case. The Court has considered the nature and circumstances of the
5 offense to which the Defendant has entered a plea of guilty, the history and
6 characteristics of the Defendant, and the nature and seriousness of the danger to any
7 person or the community that would be posed by the person's release. *See* 18 U.S.C.
8 §3142(g).

9 On September 16, 2014, Defendant entered a plea of guilty to obstructing justice
10 by retaliating against a witness in violation of 18 U.S.C. §1513(b)(2), a serious felony
11 charge that carries a 20 year maximum imprisonment. Section 3143 provides that the
12 Court shall order Defendant be detained unless the Court "finds by clear and convincing
13 evidence that the person is not likely to flee or pose a danger to the safety of any other
14 person or the community if released under section 3142(b) or (c)." 18 U.S.C.
15 §3143(a)(1). Defendant Robledo admitted as a factual basis for the plea that she
16 instructed another person to threaten Stephanie Rojas with bodily injury in retaliation
17 for Rojas' statement to law enforcement. Defendant Robledo admitted that she believed
18 that the Rojas' statement implicated her in the commission of the federal offense of
19 importation of methamphetamine and that she believed that Rojas was out of custody
20 and could be threatened. In light of the Defendant's criminal history and the serious
21 felony charge, including threats of bodily injury to another person in retaliation for a
22 statement implicating Defendant Rojas in another serious federal offense, the Court
23 cannot find by clear and convincing evidence that Defendant would not pose a danger
24 to the safety of any other person or the community if released on her own recognizance.
25 Defendant's education, employment, and impending childbirth do not overcome the
26 seriousness of her offense in this case. The Magistrate Judge's conclusion that a surety
27 is required in order to protect the safety of the community and to assure Defendant's
28 appearance in court is fully supported by all of the facts and circumstances in this case.

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2 IT IS HEREBY ORDERED that the Appeal to the District Court Judge regarding
3 the denial of bond by the Magistrate Judge (ECF No. 23) is denied.
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DATED: September 24, 2014

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6 **WILLIAM Q. HAYES**
7 United States District Judge

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